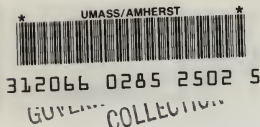


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The Commonwealth of Massachusetts

State Ethics Commission



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COMMISSION FACT SHEET

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Guidelines For Public Employees Regarding Business Travel And Related Expenses

This fact sheet explains how the Conflict of Interest Law, Massachusetts G.L. c. 268A, applies to private payment of public employees' business travel and related expenses.

I. BACKGROUND

Many public employees are asked each year to travel on official business. Payment by vendors (or other private parties) of public employees' travel expenses, as well as offers of special travel discounts or other travel benefits for public officials and employees, raise questions under two sections of the conflict law, sections 3 and 23. The situation is particularly problematic if a public employee is in a position to take official action on matters affecting the interests of the vendor or other private party.

First, §3 of G.L. c.268A prohibits state, county or municipal employees from soliciting or accepting anything of substantial value for or because of any official act they have performed or will perform. Section 3 also prohibits the giving or offering of anything of substantial value to public employees for or because of their official position, even to express gratitude or to foster goodwill. The Ethics Commission has determined that anything worth \$50 or more is always of substantial value for purposes of the conflict law. Furthermore, acceptance of items of less than substantial value may violate §3 if a public employee establishes a pattern of accepting such items from a private party or entity. If the aggregate value of the items accepted from one source equals or exceeds \$50, the Commission may use the aggregate value to establish the "substantial value" threshold. "Official act" is defined by the statute to include "any decision or action in a particular matter," or any act within an employee's official responsibility. G.L. c.268A, §1(h).

Second, the Standards of Conduct set out in §23 of G.L. c.268A prohibit public employees from using their official positions to secure unwarranted privileges of substantial value for themselves or anyone else, or from engaging in conduct that would cause a reasonable person to believe that they could be improperly influenced in the performance of their official duties by any person or business entity.

II. VENDOR PAYMENT OF BUSINESS TRAVEL EXPENSES

As noted above, public employees may not accept anything of substantial value for or because of acts within their official responsibility. This prohibition includes direct acceptance from a vendor of travel expenses incurred while working for a government agency or other public entity. Under the conflict law, public employees may not allow vendors to pay directly for their transportation, accommodation or meal expenses during such trips. Situations where this section of the conflict law comes into play include, but are not limited to, travel by selection committees to evaluate products or services being considered for purchase by the state, a county or a municipality ^{1/}; and travel by public employees in connection with existing public contracts. Public employees must be aware of potential conflict problems whenever they travel in connection with the negotiation or performance of public contracts.

Options

Only under certain limited circumstances is it permissible for vendors or potential vendors to subsidize travel by public employees. First, cities and towns may adopt an ordinance or bylaw regulating vendor payments for travel expenses. Such ordinances could ensure that the travel expenses are legitimate and directly related to the public purposes served by the travel.

Alternatively, G.L. c. 44, §53 may provide a means by which a private party may pay for the travel expenses of local officials or employees. This section of the municipal finance law appears to allow a municipality to accept grants from private parties and, in turn, the city/town may expend such funds for the specific purpose the funds were provided for, including travel, so long as the mayor or board of selectmen approves the expenditure. This procedure allows for scrutiny by the city treasurer or auditor as to the reasonableness of the expenses incurred, and thus substantially reduces the potential for abuses.

For state agencies, arrangements may be structured such that vendors would make a monetary donation to the agency specifically earmarked for travel expenses, and the traveling employees' expenses would be reimbursed in the normal manner by their agency.

^{1/} Members of selection committees are considered public employees for purposes of G.L. c.268A. A selection committee's evaluation of prospective vendors clearly constitutes the performance of an act under the employees' official responsibility; therefore, to accept directly subsidized travel, accommodations and meals from vendors while evaluating their products for the state, county or municipality is a violation of the conflict law if the expenses total \$50 or more.

Alternatively, certain state entities possessing authority to promulgate regulations may do so in order to permit the direct receipt of travel expenses under appropriate circumstances.

By following these safeguards, public employees would not directly receive anything of substantial value and would therefore not be held accountable under the conflict law, or if they did receive expenses directly, would be protected by the appropriate ordinance, bylaw, or regulation. Public officials contemplating such arrangements should contact the Commission's Legal Division for further advice.

III. TRAVEL DISCOUNTS FOR OFFICIAL AGENCY USE

A. General Discounts

Questions have also arisen under the conflict law regarding vendors offering agency-wide discounts on transportation and travel-related accommodations as part of their contract agreements with government agencies.

While the cumulative value of an agency-wide travel or accommodation discount would almost certainly exceed the \$50 "substantial value" limit, §3 would not prohibit such discounts because the Commission has held that a gift from a private party for use by a government agency does not violate §3. For example, the Commission has determined that a state agency that operates a transportation facility would not violate either §3 or §23 by enrolling the agency in a corporate car rental discount program where the car rental company is a tenant of the agency and would be the only car company used by the agency. In another case, the Commission determined that a non-profit mental health clinic that has a partnership arrangement with the state may, subject to §3, offer state employees who work at the clinic productivity incentive credits for increased work during a normal weekday for use towards acquiring books and other items limited to their official state use, but not for conference fees or travel expenses for individual employees.

Similarly, although §23 of the conflict law prohibits public employees from using or attempting to use their positions to secure unwarranted privileges of substantial value for themselves or others, a gift from a private party to a government agency does not violate §23. A public employee could, for example, accept on behalf of his or her agency an award of a trip for educational purposes paid for by a private company, as long as the employee's agency did not directly or indirectly regulate the activities of the company, and the award were given to the agency and not as a personal gift offered to any particular employee.

If the discount is not aimed at an individual, there is no opportunity and no incentive for an individual employee to use his or her position to secure the discount for individual benefit.

B. Frequent Flyer Points Offered As Part of a Corporate Discount

Frequent flyer points differ from other agency-wide travel discounts offered to government agencies by private parties. This is because, in general, they can only be awarded to individuals rather than to an agency as a whole. Therefore, frequent flyer points offered as an incentive to participate in an agency-wide corporate discount program may not be accepted by public employees if they are for the employees' personal use.

The prohibition against individuals accepting frequent flyer points as part of a state, county or municipal corporate discount is not intended to discourage public employees from continuing efforts to budget travel expenses efficiently. For example, depending upon the express terms of some frequent flyer program agreements and Federal Aviation Administration (FAA) guidelines, the establishment of a pool of frequent flyer points and related bonuses accrued on government business travel for use on other government travel would be permitted under G.L. c.268A. If you are considering such an arrangement for your agency, please call the Commission's Legal Division before taking any action.

V. SPEAKING ENGAGEMENTS

Public employees may participate in legitimate speaking engagements in connection with their public jobs and may accept expense payments necessary to cover travel costs for such engagements without violating either §3 or §23, provided that certain guidelines are followed. The guidelines for Legislators are different from those for other public employees. Legislators should consult Commission Advisory No. 2 on Honoraria.

To be considered "legitimate" for purposes of the conflict law, speaking engagements must be:

- a) formally scheduled on the agenda of a convention or conference;
- b) scheduled in advance of the public employee's arrival at the event;
- c) before an organization that would normally have outside speakers address them at such an event;
- d) not perfunctory, but should significantly contribute to the event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive or unique information or viewpoints.

Acceptance of an honorarium for non-Legislator public employees who are speaking as part of their official duties is absolutely prohibited.

The Commission has ruled that it is permissible under the Conflict of Interest Law for state employees to accept direct reimbursement from a sponsor for expenses actually incurred in delivering a speech given as part of the employee's official duties. It is very important to note that the allowance is for legitimate speaking engagements only, and not for any other kind of official travel.^{2/}

If a speaking engagement is not in connection with a public employee's official position or duties, travel expenses and honoraria may be accepted by the individual; but employees must avoid any use of public resources in connection with the speech. Such resources include, for example, computer, copier and telephone access, secretarial help, office supplies and sick time. In addition, the speaking engagement and any related preparation must be done entirely on the employee's own time --- including travel to and from the speaking location. Public employees should also be aware that if the speech is being sponsored or paid for by an individual or business having dealings with the public office or agency for whom the employee works, public written notice to one's appointing official may be necessary to avoid an appearance of conflict pursuant to Section 23 of G.L. c.268A.

In all cases, however, expenses must be limited to those necessary to making the speech. Thus, the public employee should receive only those items of transportation, lodging and meals that are directly related to a legitimate speaking engagement and no more.

CONCLUSION

This Fact Sheet is designed to clarify the definition and scope of legitimate business travel for public employees, and thus to ensure future compliance with the conflict law as it relates to business travel and related expenses. The guidelines set forth in this Fact Sheet should allow public employees to continue their efforts to keep business travel expenses to a minimum and also avoid potential abuse of official travel for personal use.

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^{2/} A new code of conduct for state managers and certain other state employees includes additional, and in some cases more restrictive, requirements for employees traveling on business. Employees who are uncertain of their status under the code of conduct are advised to contact the State Ethics Commission or their Agency Counsel for advice before accepting expense payments from any third party.

